IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

M/s.Damani Construction Company Pvt. Ltd. Vs. Municipal Corporation Jaipur
(SB Civil Writ Petition No.3105/1998)

SB Civil Writ Petition under Article
226 of the Constitution of India.

Date of order: October 03, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. R.S. Mehta, for the petitioner.

Mr. P.C.Jain, for respondent.

BY THE COURT:

The prayer of the petitioner in this writ petition is to declare the clause 5 of order dated September 9, 1996 ultra vires and quash the imposition of levy of additional floor area charges. Direction has also been sought to restrain the respondent from withholding complete building plans after one installment of conversion charges was deposited.

2. The petitioner company has been carrying on construction work and owned a plot bearing No.E-5 at New Colony Jaipur. Earlier the Jaipur Development Authority approved the plan of construction of residential building on October 16, 1996 but no construction could be started. Subsequently the petitioner submitted application to Municipal Corporation Jaipur on November 4, 1989 for change of use of land from residential to commercial purpose along with the fresh building plan. The petitioner also deposited processing fee Rs.666/- vide challan dated November 12, 1997. The Building Plan Committee approved the plan and the change of plot from

residential to commercial purpose on payment of conversion charges. Jaipur Development Authority (Jaipur Region Building) Regulation,1996 (for short `1996 Regulations') came into force w.e.f. June 25, 1996 according to which earlier building regulations of 1989 were repealed and only building regulations of 1986 were held applicable. Therefore the petitioner filed application to use the plot for commercial purposes in accordance with 1996 Regulations. Regarding conversion charges the State Government issued circular dated November 9, 1989 for depositing the charges in four annual equal installments on payment of 15% annual interest. The plan was approved on March 4, 1998 and the petitioner was informed that since it had opted for installment of conversion charges, only proportionate plan in relation with conversion charges will be issued. The petitioner submitted that payment of interest on the deferred installments of conversion charges would tantamount to payment of complete conversion charges and therefore the petitioner was entitled for release of complete building plan which had been approved on March 4, 1998.

After the approval of complete plan the respondent issued demand of Rs.6,58,283.50 vide challan No.100B, wherein at Sr.No.5 the demand of Rs.4,35,045 has been made in respect of difference of additional floor area as per new and old rules. The petitioner submitted that the plans were to be considered in respect of new 1996 regulations. The clause 5 of the order could be applicable if the owner was getting additional floor area as per new Regulations and in the case of petitioner since there was no existing building, clause 5 was not applicable. Further the petitioner applied plan within permissible parameters of 1996 Regulations. The respondent was competent to grant permission on vacant land, therefore the clause 5 is illegal. The petitioner also submitted that charges of additional floor area

was not permissible under section 65 of the JDA Act. When the petitioner has not constructed any building as per old Regulations no difference could be charged from the petitioner when the plan was approved as per new Regulations.

3. The respondent filed reply raising preliminary objections in regard to maintainability of writ petition on the ground that the petitioner had alternative remedy of appeal under Section 170 (12) of Rajasthan Municipalities Act,1959. The respondent pleaded that the maps were not submitted and released by the erstwhile Jaipur Development Authority. The plot did not fall in commercial area and it could not be allowed to use the same as commercial plot. The first installment only was deposited after filing the writ petition on July 4, 1998 therefore the petitioner was guilty of misstating the facts. The petitioner deposited conversion charges in respect of premises already constructed that was residential in nature but since the building was being used for commercial purpose levy of difference of charges was proper. The petitioner could not be allowed to raise building and use the same for commercial purpose without depositing extra floor charges.

4. I have given my thoughtful consideration to the contentions advanced before me and scrutinized the material on record.

5. The Jaipur Development Authority vide order dated September 9, 1996, determined various charges for permission of building construction pursuant to 1996 Rules. Clause 5 of the order reads as under:-

"5. पूर्व विनियम के प्रभाव व नये विनियमों के अनुसार यदि किसी भवन में अतिरिक्त फ्लोर एरिया निर्मित को सकता हो तो ऐसे प्रत्येक	प्रचलित आरक्षित दर का 25% प्रति वर्गमीटर

वर्गमीटर फ्लोर एरिया पर अतिरिक्त फ्लोर
एरिया का शुल्क"

6. Having closely analysed the relevant statutory provisions, I am of the opinion that charges of additional floor area are not permissible under section 65 of the JDA Act. Strangely when the petitioner had not constructed any building as per old Regulations how difference could be charged particularly when the plan had been approved as per new Regulations. Clause 5 of the order was related to already constructed building as per old building regulations and was not applicable to vacant land for which permission was sought to construct building. Since Building Regulations 1989 stood repealed, the plans were required to be considered as per new Building Regulations 1996. Thus imposition of levy on the petitioner was arbitrary and illegal. The preliminary objection raised by the respondent is also devoid of merit. In the facts and circumstances of the case when the plans were already approved provision contained in Section 170(12) of the Rajasthan Municipalities Act,1959 are not applicable.

7. For these reasons, I allow the writ petition and set aside the order of imposition of levy of additional floor area charges in the sum of Rs.4,35,045/-. I restrain the respondents from withholding complete building plans after one installment of conversion charges is deposited by the petitioner. No costs.

(Shiv Kumar Sharma)J.

arn